



# San Diego City Attorney **MICHAEL J. AGUIRRE**

## **NEWS RELEASE**

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### **Statement Delivered at Today's City Council Meeting San Diego City Attorney Michael J. Aguirre**

The words "No taxation without representation" ring-out as true today as when they were proclaimed by American patriot Jonathan Mayhew in 1750. But in San Diego in 2008 the people are facing taxation of \$146 million without representation.

Let me repeat that: the people of this City are facing taxation of \$146 million without representation. This \$146 million tax is being imposed on San Diego by the City's pension board. As we documented in the City Attorney's 12<sup>th</sup> Interim Report the pension board, led by the President of the Fire Fighters Union, knowingly under-priced the pension credits.

He and other members of the pension board received a financial benefit as a result of this decision to under-price the service credits. The Fire Fighter President bought service credits on 26 July 2002. What has been represented by the pension officials as the correct pricing did not go into affect until August 2003.

Others on or advising the board or otherwise interested who would have benefited from not changing the pricing were:

NAME	POSITION	DATE PURCHASED SERVICE CREDITS
John Torres	MEA official and Pension Board Member	10 June 2002
Sharon Wilkinson	Pension Board Member	13 December 1999
Ron Saathoff	Fire Fighter President and Pension Board Member	26 July 2002
Lori Chapin	Pension Board General Counsel	27 April 2000
Doug McCalla	Pension Board Chief Investment Officer	12 January 2001
Jim Madaffer	San Diego City Council	6 December 2001
Brian Maienschein	San Diego City Council	20 June 2002
Toni Atkins	San Diego City Council	23 September 2003
Dick Murphy	San Diego Mayor	12 June 2002

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The report showing taxes were being imposed by the pension board on the taxpayers was given to the City Council on 18 September 2006, 17 months ago.

This board sold 20,000 years of service credits to 6,000 city employees for at least \$146 million below actual cost. The under-pricing gave City employees credit for 8,000 years they did not work or pay for. The bill was passed on to San Diego taxpayers.

As I said, these facts were brought to the City Council's attention 17 months ago, on 16 September 2006. They were confirmed by the pension board's own actuary 5 months ago. The actuary concluded the service credit deficit was \$146 million. The City Attorney had estimated the number to be \$80 million.

The City Attorney has repeatedly asked the Council President to put on the agenda a proposed ordinance to require the SDCERS board to price the service credits at the real price. The problem can be solved by marking service credit values to actual price paid. In other words, the City employee would get what he or she paid for and nothing more or less.

The SDCERS board owes a fiduciary duty to plan participants to mark the pension credits to actual value paid or to find a comparable solution. It is a prohibited transaction for the board to fail to correct the under-pricing problem. Other board members and the pension plan staff, known as parties-in-interest, are receiving a benefit from the under-pricing. The pension board has a continuing duty to correct the under-pricing problem.

The City Council has a fiduciary duty to ensure that taxpayers are not charged \$146 million for the under-priced service credits. With three members of the City Council personally benefiting from keeping the under-priced pension credits in place the failure to act is even more egregious.

With no corrective action from the SDCERS board and no help from the Council the City Attorney brought a writ of mandate, requesting the court to review whether SDCERS board's decision to pass on the \$146 million pension service credits was in compliance with the Municipal Code, which states the purchase of service credits are to be priced cost-neutral.

Council President Peters sent a memorandum to the City Attorney based upon the words of a lawyer for a city union. Whatever questions she has should be addressed at a public meeting.

An issue has arisen about whether the City Attorney has the authority to bring that suit. This issue can be avoided by two actions on the part of the council: 1) pass the ordinance directing SDCERS to properly price the service credits; 2) give council concurrence to the court suit.

Council President Peters I am requesting that you put the \$146 million tax on both the public and closed session agendas for 4 March 2008 and 5 March 2008. Will you set these important matters for a public session of the City Council? Am I correct that you have agreed to notice the related court case for closed session?

Michael Aguirre, San Diego City Attorney

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